



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2018-0176; FRL-9995-44-Region 6]

Air Plan Approval; New Mexico; Albuquerque/Bernalillo County; Minor New Source Review (NSR) Preconstruction Permitting Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County minor New Source Review (NSR) program submitted on January 18, 2018. The EPA is also converting our earlier conditional approval of the minor NSR Preconstruction Permitting Program to full approval. We are taking this action in accordance with the Clean Air Act (CAA, the Act) requirements.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2018-0176. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Ms. Kyndall Cox, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214-665-8567, cox.kyndall@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Kyndall Cox or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our April 24, 2019 proposed approval (84 FR 17129). In that document we proposed to approve the revisions to the City of Albuquerque-Bernalillo County minor NSR preconstruction permitting program submitted on January 18, 2018 and to convert the conditional approval of the minor NSR permitting program to a full approval. The proposal addressed the County’s submittal regarding accelerated permitting procedures, technical permit revisions, and conflict of interest and we found the submitted revisions to be consistent with the required elements of minor NSR programs at 40 CFR 51.160-51.164. We did not receive any comments regarding our proposal.

II. Final Action

We are approving revisions to the City of Albuquerque-Bernalillo County minor NSR permitting program submitted on January 18, 2018. The revisions were adopted and submitted in accordance with the requirements of the CAA and federal regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the City of Albuquerque-Bernalillo County minor NSR program are consistent with federal regulations at 40

CFR 51.160-51.164 and the associated policy and guidance. Therefore, under section 110 of the Act, the EPA approves into the New Mexico SIP for the City of Albuquerque-Bernalillo County the following revisions adopted November 8, 2017, and submitted to the EPA on January 18, 2018:

- 20.11.41.13 NMAC, Application for Permit;
- 20.11.41.14 NMAC, Public Notice by Department – Public Participation;
- 20.11.41.15 NMAC, Public information Hearing (PIH);
- 20.11.41.28 NMAC, Administrative and Technical Permit Revisions; and
- 20.11.41.32 NMAC, Accelerated Review of Application.

We are also approving the following definitions since they are consistent with federal requirements for minor NSR permitting. Specifically, the EPA is approving the definition of “conflict of interest” at 20.11.41.7.J NMAC, the definition of “technical permit revision or technical revision” at 20.11.41.7.RR NMAC; as well as, the references to “technical permit revisions” in the definition of “permit” at 20.11.41.7.EE NMAC. Because of our final approval of the January 18, 2018, submitted revisions, we are converting our prior conditional approval of the City of Albuquerque-Bernalillo County minor NSR permitting program to a full approval. This action is being taken under section 110 of the Act.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the New Mexico regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available

through www.regulations.gov and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 24, 2019.

David Gray,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. In §52.1620, in paragraph (c), the second table, titled “EPA Approved Albuquerque/Bernalillo County, NM Regulations,” is amended by revising the entry for Part 41 (20.11.41 NMAC) “Authority to Construct” to read as follows:

§52.1620 Identification of plan

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(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS				
State citation	Title/Subject	State approval/effective Date	EPA approval date	Explanation
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Part 41 (20.11.41 NMAC)	Authority to Construct	11/08/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2019-13765 Filed: 6/28/2019 8:45 am; Publication Date: 7/1/2019]